

LAWYERS' ADVISORY COMMITTEE MINUTES

February 23, 2006

TRENTON, NJ

Chairperson Joe Casello opened the meeting with Judges Wizmur, Ferguson, Lyons and Steckroth in attendance.

1. The minutes from the December 2005 LAC meeting were approved.

2. Committee Reports:

a. Chapter 11 Rules Committee:

Administrative Claims Procedure Rule was approved for submission to the Board of Judges.

Fee application procedures: Pat Staiano reported on revised rule 2016. She stated that several accounting firms asked to review the proposed fee application procedures. She said that their suggestions and committee comments resulted in the most current version of the proposed rule. A discussion of the proposed changes began. Ed Paul stated that employee benefits and pensions should be in part (g). Leonard Wizmur suggested that there be a separate category for fee application preparation. Pat Staiano stated that fee applications are now project based, and that Delaware and Pennsylvania have been task based. Ed Paul expressed concern about fees for adversary proceedings and their results. Judge Lyons asked if various categories could be merged to enable the court to deal with them. At the conclusion of the discussion, it was moved that the proposed rule and form with suggested changes be presented to the Board of Judges for review

b. Chapter 13 Subcommittee

Jamie Finberg reported on no-look attorney fees and comfort orders. Marie-Ann Greenberg reported the Chapter 13 model plan.

Survey results on increasing the no-look fee were reported. 11.8% of those surveyed wanted no-look fees in excess of \$3500. 40% wanted fees of \$3500 and the balance wanted fees of under \$3500.

Leonard Wizmur spoke about what other jurisdictions were doing on the issue of flat fees. A discussion began on the issue of fees for defense of motions. It was concluded that everyone review the survey results and make recommendations on

flat fees to the Board of Judges. There was also a discussion of supplemental fee applications being limited to once every 180 days; the Chapter 13 rules committee believed that this may not be warranted in Chapter 13 cases.

Comfort Orders: It was decided that the issue of a form of comfort order on under §362(c)(3) should be tabled because of a recent North Carolina decision that the stay only disappears as to the debtor, not as to the property of the estate. A discussion then began on comfort orders in cases where there were two or more prior cases dismissed within a year of filing. It was questioned whether the comfort order would apply only to the creditor requesting it, or to all creditors in the case. It was decided that the Chapter 13 committee develop a procedure for obtaining comfort orders.

Chapter 13 model plan: Marie-Ann Greenberg spoke on concerns about part six of the model plan. She suggested that the plan be revised to make it control, not the claim. At issue was the motion part of the plan. It was the opinion of those involved in the issue that debtors' attorneys would have their work duplicated if they filed a plan that sought to modify a claim and cram down a vehicle only to find that a claim was filed at a higher amount by a creditor who did not attend confirmation and then be faced with the task of attacking the claim by separate motion or adversary proceeding.

c. Attorney Discipline Mentor Committee: Bunce Atkinson was not able to attend the meeting. As a result, there was no report.

d. Clerk's Report

Jim Waldron reported a sharp decrease in filings after October 17, 2005. He said that there was a very small upward trend in December compared to November. He stated that the issue of credit counseling would be discussed at the Judges Conference

e. Liaison Reports

US Trustee: Martha Hildebrandt reported on first meetings completed. She also stated that Newark Chapter 7 trustees get 15 to 20 cases per run while Atlantic City gets 5 to 8 and Trenton and Camden get more. She reported that 12 small business cases have been filed in Chapter 11. She stated that means testing review is done at the UST Office and is going well. She reported that \$91398 is the median income for a family of four, that 12 credit counseling agencies are in NJ and the Rutgers extension and Isabel Balboa are approved for credit education.

District Court: Frank Vecchione was not in attendance

NJ Bar Bankruptcy Section: Barry Frost was not present

IRS: Patricia Delzotti advised that there was no report from IRS

NJ Attorney General: Meg Holland and Rachel Lehr were not present at the meeting

B. Old Business

Local Rule 16A is to be amended to add certification language. The issue of pre-signed certifications was not discussed since Judge Stern has the case.

C. New Business

Sending pay stubs to the trustee

A discussion began on the issue of having debtors sending a copy of their pay stubs to the trustee one week before the date of their first meeting. It was suggested that a letter be sent out to each debtor, but if pay stubs were provided at the first meeting it would be acceptable. It was concluded that this issue should be taken up at the June meeting and discussed by the trustees.

Accountants: A discussion began on the issue of retaining accounts whether their retention should be for a fixed amount of time or for an unlimited amount of time. Judge Wizmur stated that retention without time limit was acceptable to her, but the debtor may have a different view. Judge Ferguson said that Judge Gindin felt strongly about time limits. Judge Lyons stated that the new form of order has no time limit. Judge Wizmur stated that the consensus was that unless there was a request to limit the amount of time an accountant was retained for, no time limit was needed.

Certifications of nonpayment or non-receipt of funds: Jamie Finberg questioned whether we need an order resolving issues surrounding certifications of nonpayment.

Debtor Education: Judge Wizmur discussed the Financial Literacy Program supported by the NJ Bankruptcy Law Foundation

Closing Remarks:

The next meeting was scheduled for 6-14-06 at a location to be announced.